given there are appropriate ways of dealing with the offence. In our opinion, it is not correct to increase a sentence on that ground. That is, in effect, to find the prisoner guilty of perjury without a charge and without a trial and to punish him for that offence.

As the appellant was not charged and convicted of the offence of suborning witnesses, the district judge was, on the authority of *Quinn*,[5] wrong to have taken that fact into account in determining sentence.

I accept the submission of counsel for the appellant that it was through hard work and determination that the appellant managed to rise from a clerk after leaving school to being a senior officer with BNP. Through self-study he obtained two professional qualifications, the Chartered Institute of Secretaries and the Institute of Bankers. Now everything is in ruins for him.

Counsel also submitted that in view of the long lapse of time since the commencement of the present proceedings it would not be fair to put the appellant through a term of imprisonment and that a fine should be adequate. Counsel said that the appellant was convicted and sentenced by the district judge on 28 August 1984. Notice of appeal was filed on the same day. The grounds of decision of the district judge were dated 31 August 1985. However, the record of the proceedings was not made available to the appellant until 15 January 1988. Neither counsel for the appellant nor the DPP was able to inform me of the cause for the delay. Be that as it may, I do not see any prejudice to the appellant by the delay. He has been on bail. The case *Voon Chin Fatt* v *PP*[6] is clearly distinguishable.

Having considered all the circumstances, it seems to me that a fine would be wholly inadequate for the offences which the appellant has committed. This is not a case of the receipt of an isolated corrupt gratification. In so far as the charges involving Ling are concerned, they stretched over a period of 16 months. Though the appellant did not ask for it, he willingly accepted every offer of gratification by Ling. The amounts involved were substantial. The appellant had abused a position of trust. A custodial sentence is called for. However, taking into account the grounds advanced by counsel in (a) and (b) (ii), (iii) and (iv) above, including the fact that the appellant previously had a clean record, I agree that the sentences imposed are manifestly excessive and would reduce them as follows:

DAC 2369/83	:	six months to three months
DAC 2370/83	:	six months to four months
DAC 2371-2375/83	:	three months (each charge) to two months (each charge)
DAC 2376-2377/83	:	two months (each charge) to one month (each charge)
DAC 2378-2385/83	:	three months (each charge) to two months (each charge)
DAC 2386/83	:	12 months to 6 months

The sentences imposed by the district judge on the five charges involving Firoz Khan and the one charge involving Haji Moosa are set aside as the appeal on those charges are allowed.

I order that the sentences for DAC 2370/83, DAC 2371/83 and DAC 2386/83 be served consecutively and the other sentences be served concurrently with the said three sentences. In short, the appellant is to serve a total prison term of 12 months. In addition, the appellant shall also pay a penalty of $54,078 as required under s 13(1) of the Act. In the result the appeal is allowed to the extent as indicated above.

Appeal allowed in part.

Solicitors: *Pala Krishnan & Partners.*

Reported by *Terence Tan Bian Chye.*

Lim Teck Hoe v Kathleen Chia Ah Lek

HIGH COURT (SINGAPORE) - SUIT NO 4193 OF 1981
COOMARASWAMY J
23 JUNE 1989

Contract - Sale of option - Whether such sale subject to 'legal requisitions'

Evidence - Written contract - Whether oral evidence of addition to contract admissible

Land Law - Sale of option for sale and purchase - Whether subject to legal requisitions

The plaintiff brought this action against the defendant for the sum of $20,000 as money had and received by the defendant for consideration which had totally failed. The defendant had negotiated the purchase of a piece of land ('the property') with one Lim Soon Leong ('LSL') a broker of real estate. It was agreed that the price would be $155,000 for the property and another $20,000 in cash for the furniture and fittings. Pursuant to the agreement, an option was executed by LSL on behalf of the company he owned, which was the owner of the property. The defendant gave LSL two cheques, one for $5,000 being the option money and a cash cheque for $20,000. The plaintiff testified in court that following this, he 'agreed to purchase the property at $187,000 subject to legal requisitions'. Following this, the plaintiff gave the defendant a cheque for $32,000 which was to be the defendant's profit. The plaintiff exercised the option and sent some money to the vendor of the property. Subsequently, after some correspondence between the plaintiff and the vendor, the plaintiff decided not to go through with the sale and purchase of the property.

Held, dismissing the claim:

(1) The plaintiff's claim that he had agreed to purchase the property could not be right in law as the defendant had no capacity to sell. All she could do was to assign her rights under the option.

(2) The court did not believe the plaintiff when he said that his purchase of the property was subject to legal requisitions. He was not buying the property from the defendant but only the right to buy it. Also, the right he was buying was contained in a document, the option. What he bought would be governed by the terms of the option. The option contained no provision on 'legal requisitions' other than the reference to the Singapore (Revised) General Conditions of Sale.

(3) The court did not believe that the defendant knew what legal requisitions were. The plaintiff could not have expected the defendant to agree to nor would the defendant have agreed to such a term without extracting a similar term from the grantee of the option. The option was also in writing and any variation or addition to its terms had to be in writing.

(4) Even if the words 'subject to legal requisitions' were in the contract, the words were too imprecise. Additionally, oral evidence of the addition of a term to the written option would be prohibited under the Evidence Act. For the above reasons, the court decided that the words did not form part of the contract.

(5) The plaintiff's alleged rescission of the contract was unjustified and the vendor, LSL's company, should not have accepted the rescission even if the plaintiff was right as to the alleged addition of the legal requisition clause.

(6) One reason for this conclusion was that by this clause, the purchaser's right to cancel only arose if the purchasers had by written notice to the vendor one week before the date fixed for completion treated the contract as rescinded. No such notice was given.

(7) Also, the replies from the government departments were not unsatisfactory. The property would only be affected by road-widening if redevelopment of the property took place. There was no stipulation in the option or alleged legal requisition clause that the property was being purchased for redevelopment.

(8) There was no total failure of consideration as between the plaintiff and the defendant. Even if this was wrong, the defendant cannot be made liable for the $20,000 because the rescission was in law and in fact not justified. It was also made and accepted without the defendant being given an opportunity to challenge the actions of the purchasers and the vendor on rescission.

(9) The plaintiff's claim was therefore dismissed with costs. The defendant was not to recover the costs of producing the bundles of documents as there were no documents in dispute and instead of one bundle, three bundles were used, requiring cross referencing.

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 73 of 1984.]

Case referred to

1 *Peh Kwee Yong* v *Sinar Co Pte Ltd* [1987] 2 MLJ 533 (refd)

Legislation referred to

Evidence Act (Cap 97, 1985 Ed).

Cheng Tim Pin for the plaintiff.
Tang King Kai for the defendant.

Cur Adv Vult

Coomaraswamy J: The plaintiff brought this action against the defendant for the sum of $25,000 (reduced at trial to $20,000) claimed by him as money had and received by the defendant for consideration which had totally failed. I dismissed the plaintiff's claim and he now appeals.

The facts as found by me are that the defendant was in 1981 sole proprietor of Kathleen International Piano Company. She indulged in certain other business activities and was a remisier and broker in the sale and purchase of properties. In 1981, one Lim Soon Leong ('LSL') operated a company called Kopoh Enterprise Pte Ltd, a broker of real estate property. It had for sale a property known as 180, Tanjong Katong Road ('the property'). LSL had early in 1981 tried to sell this property at prices ranging from $205,000 to $195,000 and for this purpose used the services of one Ong Eng Seng ('Ong') as an intermediary at an agreed commission of 2%. He also ran errands for LSL or his company. He had mentioned to the defendant the property was available for sale at $200,000. The plaintiff, Lim Teck Hoe, was interested in the purchase of the property.

Although they had not met till three months before the transaction in dispute, the defendant and the plaintiff are cousins, she being the daughter of the plaintiff's mother's younger brother. He had been to her shop and asked her advice on an option to buy the property at $205,000. As Ong had earlier quoted this property at $200,000, she said she could get it at a lower price and arranged a viewing. She then negotiated the price with LSL and one or two days before 10 June 1981 the price was agreed at $175,000 of which only $155,000 was to appear on the option and contract and a further $20,000 in cash and purportedly for furniture and fittings which sum was not to appear at all on any documentation. Pursuant to this understanding, on 10 June 1981 an option was executed by LSL on behalf of his company. The vendor's copy as given by him to the defendant is D-1 and the option after subsequent exercise by the plaintiff and his wife is at B-4. (Documents referred to with a figure preceded by A, B or C refer to pages of bundles so respectively marked. Documents referred to with a figure preceded by P or D are exhibits tendered respectively by the plaintiff and the defendant).

Ong, LSL and the defendant met at Harapan Building on or before 12 June 1981. The parties are not clear as to dates but my finding is that the meeting was late on 11 June 1981 or on 12 June 1981. The option (on a printed proforma of the solicitors of LSL or his company) bearing the date 10 June 1981 was handed over to the defendant. The option was originally addressed to the defendant (mistakenly described as 'Mr') alone. Before it was handed over, after the defendant's name there was added '& or nominees' and this addition was indicated as accepted by

both parties by their respective signature thereto. This was really unnecessary as the operative part of the option makes it exercisable by '... any person who accepts this offer in the manner hereinafter provided ...'. Exercise was to be at or before 4 pm on 23 June 1981 and completion was to be on 28 July 1981. The stated price as agreed between the parties was $155,000 and the words of acceptance concluded with 'upon the terms above-mentioned'.

The defendant gave LSL two cheques, one for $5,000 being the option money, and a cash cheque for $20,000. The evidence of Ong and the defendant confirms this. Ong further said he went to the defendant's bank with LSL, cashed the cheque and handed over the $20,000 cash to LSL. LSL denies this. On the evidence given, I believe the defendant and Ong and disbelieve LSL on the facts set out above. The real evidence also supports this finding. C-3 to 6 contain copies of the Overseas Union Bank statements of the defendant's firm's June 1981 bank account. On 12 June 1981 a cash cheque (No 0693640) for $20,000 was paid out. Later in the day, the earlier numbered cheque (No 0693639) for $5,000 was debited. This obviously was the option money. The sequence of the payments bears out Ong's evidence that he and LSL went to the bank to cash the $20,000 cheque. A cheque for the option money made payable to the vendor's solicitors would have to be paid into the payee's accounts for clearing and it would naturally be cleared later than the cheque cashed over the counter.

Further lack of credibility of LSL is shown by these extracts from his evidence when cross-examined by Mr Tang:

> Q: Did you finally agree to a sale price of $155,000 plus $20,000 not in contract?
>
> A: I deny that this $20,000 was for fixtures, fittings and furniture. Plaintiff did not go to Harapan (old Tunas) Building on or about 12 June 1981. I do not even know where defendant's office is or was. In June 1981 I know defendant was working in Harapan Building. I went to that office once on this transaction. That was when option was finalized - 12 June 1981. Ong Eng Seng, the broker, and I met defendant there. Meeting was by prior arrangement.

The question and answer quoted shows LSL's evasiveness. He did not want to deny, undoubtedly because he honestly could not, that the sale price was $175,000 of which $155,000 was on contract and $20,000 not in it. Further, he denies knowledge of where the defendant's office is or was but goes on to say that in June 1981 (a very material time) she was working in Harapan Building. Even further, he says the option was finalized on 12 June 1981. It is, however, dated 10 June 1981. 11 June 1981 is the date of the cash cheque for $20,000 and of the cheque for the option money of $5,000. These cheques were, as stated above, debited to the defendant's account on 12 June 1981.

The plaintiff, having made preliminary approaches, made a further approach to the defendant on the property on 12 June 1981, by which time she had the option. He says he 'agreed to purchase property at $187,000 subject to legal requisitions'. His claim that he 'agreed to purchase property' cannot be right in law. The defendant had no capacity to sell. All she could do was to assign to him her rights under the option. I find as a fact that the transaction between the plaintiff and the defendant was in fact an assignment by the defendant to the plaintiff of the option to purchase the property in consideration of a total of $37,000 paid to her. Of this sum, $5,000 was reimbursement to her of the option money she had paid the vendor and $32,000 was for her to deal with at her will.

In his evidence-in-chief, the plaintiff said:

> I told defendant I could nominate any one or more persons as buyer and she agreed. Oral agreement. Following agreement, defendant asked me for cheque for $37,000 - $5,000 was the option fee; $32,000 was to be her profit for the sale of this property. I had seen option at that time - photocopy in B-4. Does not contain the additional clause on satisfactory replies to requisitions. No sale in option of furniture and fittings.

I do not believe the plaintiff when he said his purchase of the property was 'subject to legal requisitions'. My reasons are:

(a) He was not buying the property from the defendant but only a right to buy it.

(b) The right he was buying was contained in a document, the option.

(c) What he bought was necessarily governed by the terms of the option.

(d) The option contained no provision on 'legal requisitions' other than the reference to the Singapore (Revised) General Conditions of Sale.

Apart from these four obvious factors there are others, ie:

(e) I cannot believe that the defendant then or even at the trial knew what 'legal requisitions' meant, particularly ones of the type that produced problems between him and the vendor. They are tricky provisions and in this case, exercised the minds at that time even of experienced conveyancers. (The terms of the so-called additional clause are set out thereafter and the wording shows clearly that no lay person could have thought of them, certainly not the plaintiff and the defendant.)

(f) Looked at with realism, the plaintiff could not have expected the defendant to agree to nor could the defendant have agreed to accept such a term without extracting a similar term from the grantor of the option. There was no evidence of LSL agreeing to such a term till 23 June 1981 or even being told of it till after 19 June 1981 by which time the defendant was totally out of the picture.

(g) The option was in writing and any variation or addition to its terms had to be in writing.

I disbelieve the plaintiff and find that there was no addition of the term 'subject to legal requisitions' in the contract between the plaintiff and defendant on 12 June 1981. I also disbelieve him when he said he recalled such a provision from a 1977 transaction. Even if there was, the words 'subject to legal requisitions' are too imprecise and vague to be given legal effect and, in any event, oral evidence of the addition of a term to the written option would be prohibited under the Evidence Act. In any event, there was clear acknowledgement by him that the $32,000 was to be 'the defendant's profit'. What she did with it (whether she paid LSL for furniture and fittings, for anything else or she pocketed it) was entirely her business and of no concern to the plaintiff. He gave her a cheque bearing date 12 June 1981 for $37,000 (A-15) which was paid into and credited to the defendant's Overseas Union Bank account 01-148909-0 on 13 June 1981. In my view, that concluded her connection with the transaction and thereafter no part of it concerned her at all.

The plaintiff and his wife saw their solicitors, Messrs Goh & Hin, who on 19 June 1981 wrote B-1 to Philip Wong & Co, the vendor's solicitors. They said they understood from their clients that the vendor had agreed to incorporate an additional clause in the option. They asked for confirmation of the addition. The clause in question was set out in the letter and reads as follows:

> The sale and purchase herein shall be subject to the purchasers' solicitors receiving satisfactory replies to the legal requisitions to the various government departments. If any of such replies shall not in the view of the purchaser or his solicitors be satisfactory then the purchasers shall be entitled by written notice to the vendor or his solicitors one week before the date fixed for completion and the sale and purchase herein shall be treated as cancelled and the deposit shall forthwith be refunded to them without any interest or deductions whatsoever and thereafter this option shall be void and of no further effect and neither party hereto shall have any claim demand action proceedings whatsoever against the other.

It must be recalled that this letter was written four days before the last day for the exercise of the option. No reply having been received to the letter of 19 June, Messrs Goh & Hin wrote on 23 June a letter (B-2) delivered by hand and marked 'urgent'. They stated they had not received a reply to their letter of 19 June. The option duly exercised by their clients was nevertheless sent with a cheque for $10,500 which with the option money of $5,000 totalled $15,500, being 10% of the purchase price and the deposit payable under the option. They also said that the term mentioned in the letter of 19 June also formed part of the option.

Before they received B-2, the vendor's solicitors wrote B-3 to the purchasers' solicitors confirming the additional clause. It must be noted when all these took place, the defendant was totally out of the picture and the exchange of correspondence involving this additional clause did not involve her at all.

The plaintiff's solicitors, Messrs Goh & Hin, on 13 July 1981 wrote a letter (C-8) to the vendor's solicitors enclosing: (a) letter of authority signed by the plaintiff and his wife nominating the wife and one Leow Lip Seng as transferees; and (b) a draft transfer for the vendor's solicitors' approval. The vendor's solicitors were also invited, if they approved the engrossed draft transfer, to get the vendor to execute the transfer if they had no amendments and to send their completion account. This is normally the last inter partes step in a sale and purchase of property by a purchaser's solicitors. No mention is made of the transaction being subject to satisfactory replies to legal requisitions although the last sentence reads:

> Meanwhile, please be informed that we have not received our legal requisitions to the various government departments and we will write to you again.

Subsequent correspondence and discussions between the parties resulted in the vendor and the plaintiff and/or his nominees deciding not to go through with the sale and purchase. This is contained in letters of 5 August, 13 August and 25 August 1981 (A-1, A-4, A-5, A-6 and A-8) from the purchasers' solicitors to the vendor's solicitors. By 25 August 1981, the vendor agreed to refund to the purchaser(s) the 10% deposit.

The plaintiff's alleged rescission of the contract was in my view unjustified and the vendor or his solicitors should not have accepted the rescission even if the plaintiff was right as to the alleged addition of the legal requisition clause as cited above. There are two reasons for this:

(a) By the clause, the purchaser's right to cancel arose only if the purchaser by written notice to the vendor or his solicitors one week before the date fixed for completion treated the contract as rescinded. No notice was given by the stipulated completion date of 28 July 1981.

(b) The replies from the government departments relied on for rescission were not unsatisfactory. The property was not affected by any road, backlane or drainage proposal. It was not the subject of any gazette notification. The interpretation plan showed that the property could be affected by road-widening but only if redevelopment of the property took place. There was no stipulation in the option or the alleged legal requisition clause that the property was being purchased for redevelopment nor was any such stipulation claimed by the plaintiff as given to the defendant. Authority for this is *Peh Kwee Yong* v *Sinar Co Pte Ltd*[1] and the cases cited therein.

It is noteworthy that as appears from P-1, the plaintiff's solicitors' latter dated 19 August 1981 to the vendor's solicitors, the latter by letter (A-15) of 17 August 1981 challenged the purchasers' right to rescind the contract of purchase. They subsequently changed their minds for reasons best known to them. What is important is that no reference was made to the defendant and even if she was otherwise liable, she was given no opportunity to challenge the purchasers' decision not to proceed with the purchase and the vendor's acceptance of this decision. In my view, she cannot be made liable without having had this opportunity.

After the vendor and the purchaser(s) decided not to proceed with the sale and purchase, the defendant out of goodwill paid the plaintiff $12,000 by way of refund of her profit. As to the remaining amount, the defendant said it had to be recovered from LSL. The plaintiff agreed with her. Accompained by her, the plaintiff went to see LSL and demanded the return of the $20,000 but he denied that he received the money. He also made this denial in court as already indicated. I disbelieve LSL on this. It is to be borne in mind that one certain way LSL could avoid liability for the $20,000 was to ensure that the defendant was liable and my finding is that he gave evidence in an effort to bring this about. It is also to be remembered that by reason of the plaintiff and the defendant not proceeding with the purchase, he made $5,000 less than he would have in that on 12 September 1981, he sold the property to one Tan Liang Song for $170,000.

My findings are that there was no total failure of consideration as between the plaintiff and the defendant and that these parties did not agree to the addition of the legal requisition clause to the option. Even if I am wrong on this, my view is that the defendant cannot be made liable for the $20,000 because the rescission was, in law and in fact, not justified and in any event made and accepted without the defendant being given an opportunity to challenge the actions of the purchaser(s) and the vendor on rescission.

I therefore dismissed the plaintiff's claim with costs. I also ordered that the defendant was not to recover the costs of producing the bundles of documents. No documents were in dispute between the parties and instead of one bundle, there were three bundles before me, necessitating reference from one bundle to another.

Claim dismissed.

Solicitors: *Yap & Yap; Tang & Partners.*

Reported by *Terence Tan Bian Chye*

MALAYSIAN REPORTS

Malayan Banking Berhad v International Tin Council and another appeal

SUPREME COURT (KUALA LUMPUR) - CIVIL APPEAL NOS 29 AND 30 OF 1987
ABDUL HAMID LP, MOHAMED AZMI AND AJAIB SINGH, SCJJ
26 AUGUST 1989

Civil Procedure - Service out of jurisdiction - Monetary claim based on transaction effected in London against defendant out of jurisdiction of High Court - Claim for damages against co-defendant within jurisdiction - Whether s 23(1) of Courts of Judicature Act confers extra-territorial jurisdiction on High Court - Whether service sole foundation of jurisdiction - Whether exceptions exist to general principle that jurisdiction is territorial - Rules of the High Court 1980, O 11 - Courts of Judicature Act 1964, s 23(1)

In this case the appellants had brought an action against the respondents. The first respondents, the International Tin Council ('ITC'), are outside the jurisdiction of the High Court but the second respondent had a place of business within the local jurisdiction of the High Court. The loan transaction on which the claims were based were effected in London but the tin pledged by the ITC as security for the loan was situated within the jurisdiction. The registrar granted leave to the appellants to serve out of jurisdiction a notice of concurrent writ of summons on the ITC in London. On appeal, the learned judge of the High Court set aside the registrar's order. He came to the conclusion that the jurisdiction of the High Court is restricted to those upon whom its process may be served within the territorial jurisdiction and to this general rule the only exception is to be found in O 11 of the Rules of the High Court 1980. The learned judge rejected the argument that s 23(1)(h) of the Courts of Judicature Act 1964 creates another exception to the general rule on extra-territorial jurisdiction of our courts. The learned judge therefore held that the monetary claim was outside the purview of O 11 r 1 of the Rules of the High Court 1980 but the declaratory order sought against the ITC and the other respondent relating to the pledged tin fell under sub-paras (j) or (k) of the said order. The appellants appealed.

Held, allowing the appeals:

(1) Service is not solely the foundation of our High Courts. Apart from O 11 r 1 of the Rules of the High Court 1980, s 23(1)(b) of the Courts of Judicature Act 1964 provides extra-territorial jurisdiction to the High Court in cases where foreigners overseas are sued as co-defendants with local residents.

(2) In interpreting s 23(1)(b) of the Courts of Judicature Act it must be assumed that the legislature knows the then existing state of the law on the jurisdiction of the High Courts under the Courts Ordinance 1948, and in construing an Act of Parliament where the words used by the legislature are precise and unambiguous, then the literal and strict construction rules should apply. There can be no doubt that Parliament intends to confer on the High Courts extra-territorial jurisdiction in cases where more than one defendant are being sued, so long as one of the several defendants resides or has his place of business within Malaysia.

(3) On the facts there is no dispute that the second respondent has a place of business within the local jurisdiction and that they were one of several defendants in the cases under appeal.